



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/825,067	04/04/2001	Kelly G. Ammann	2599-104-D2	2452

6449 7590 10/07/2003

ROTHWELL, FIGG, ERNST & MANBECK, P.C.
1425 K STREET, N.W.
SUITE 800
WASHINGTON, DC 20005

EXAMINER

LUDLOW, JAN M

ART UNIT	PAPER NUMBER
----------	--------------

1743

DATE MAILED: 10/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/825,067

Applicant(s)

AMMANN, KELLY G.

Examiner

Jan M. Ludlow

Art Unit

1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3 and 11-27 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 3 and 11-27 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 April 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3,5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Art Unit: 1743

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 3, 11-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over ~~Litsche~~ Litsche in view of Sucholeiki.

5. Litsche (5240678) shows a rotating housing 11 having tray movement member 14 with hook 56 for engaging loop 80 on test tube tray 5 for drawing the rack into housing 11. Elongate opening 81 is provided in housing 11 (Fig 5, col. 2, lines 38-66).

Art Unit: 1743

The hook is driven by stepper motor 61, drive gear 66, toothed belt 63, guide roller 65, drive gear 66, toothed belt 49 and idler 48 (col. 5, line 66- col. 6, lines 50). Motor 69, pulley (gear) 70 and belt 37 drive housing 11 (col. 5, lines 22-28). Sensors 27, 32 and 68 are provided to monitor the position of the tray movement member 14 and the test tube tray (instant receptacle). See, e.g., col. 3, lines 60-68 and col. 6, lines 34-46.

6. Litsche fails to teach the instant screw drive mechanism.

7. Sucholeiki teaches that means for transporting receptacles using a stepper motor can employ any of a screw drive, belt drive, rod-gear-sprocket combination or cord/pulley mechanism as mechanical equivalents for connecting the stepper motor and receptacle to move the receptacle with the stepper motor (col. 5, lines 6-39, esp. 37-39).

8. It would have been obvious to use a screw drive in place of the belt drive of Litsche in order to provide an equivalent mechanical expedient for moving receptacles using a stepper motor as taught by Sucholeiki.

9. Claims 3, 11-18, 20, 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clark (5482861) in view of Sucholeiki.

10. Clark (5482861) teaches a table/housing 42 with a rotational axis 178. An arm 173 with hook 184 is driven by drive gear 174 and gear track 176 to hook container 180 and draw it onto the table 42. The table is driven by a stepper motor (col. 22, lines 6-7). See e.g., col. 21, lines 25-63, Fig. 11.

11. Clark fails to teach the instant screw drive mechanism.

12. Sucholeiki teaches that means for transporting receptacles using a stepper motor can employ any of a screw drive, belt drive, rod-gear-sprocket combination or

Art Unit: 1743

cord/pulley mechanism as mechanical equivalents for connecting the stepper motor and receptacle to move the receptacle with the stepper motor (col. 5, lines 6-39, esp. 37-39).

13. It would have been obvious to use a screw drive in place of the gear-sprocket drive of Clark in order to provide an equivalent mechanical expedient for moving receptacles using a stepper motor as taught by Sucholeiki.

14. Claims 19, 21-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clark (5482861) in view of Sucholeiki as applied to claims 3, 11-18, 20, 26-27 above and further in view of Litsche.

15. Clark fails to teach a pulley drive for the table or sensors for detecting receptacles and the hook device.

16. The teachings of Litsche are given above.

17. It would have been obvious to use a pulley drive to rotate the table of Clark in order to provide an equivalent mechanical device for rotating a table element as taught by Litsche. It would have been obvious to provide receptacle and hook device sensors in the apparatus of Clark as taught by Litsche in order to better monitor and control movement of devices within the apparatus.

18. Claims 3, 11-21, 26 are rejected under 35 U.S.C. 102(e) as being anticipated by Horner (6086827).

19. Horner teaches a carrier 28, hook 34 driven by screw 40 and stepper motor 38. The hook engages part 166 on receptacle 160 and pulls the receptacle into a slot on the carrier inside housing 32. Motor 24, pulley 29 and belt 27 coupled to the drive shaft drive the receptacle carrier. See, e.g., Figures 9-12, cols. 8-9.

Art Unit: 1743

The applied reference has a common assignee with the instant application.

Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

20. Claims 3, 11-21, 26 are rejected under 35 U.S.C. 102(e) as being anticipated by Horner (6517783).

21. Horner teaches a carrier 28, hook 34 driven by screw 40 and stepper motor 38. The hook engages part 166 on receptacle 160 and pulls the receptacle into a slot on the carrier inside housing 32. Motor 24, pulley 29 and belt 27 coupled to the drive shaft drive the receptacle carrier. See, e.g., Figures 9-12, cols. 8-9.

The applied reference has a common assignee with the instant application.

Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

22. Claims 3, 11-21, 26 are rejected under 35 U.S.C. 102(e) as being anticipated by Horner (6517782).

23. Horner teaches a carrier 28, hook 34 driven by screw 40 and stepper motor 38. The hook engages part 166 on receptacle 160 and pulls the receptacle into a slot on the

Art Unit: 1743

carrier inside housing 32. Motor 24, pulley 29 and belt 27 coupled to the drive shaft drive the receptacle carrier. See, e.g., Figures 9-12, cols. 8-9.

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

24. Clark (5482861) teaches a table 42 with a rotational axis 178. An arm 173 with hook 184 is driven by drive gear 174 and gear track 176 to hook container 180 and draw it onto the table 42. See col. 21, lines 25-63, Fig. 11. Clark fails to teach the instant screw drive mechanism.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jan M. Ludlow whose telephone number is (703) 308-4039. The examiner can normally be reached on Monday-Thursday, 11:30 am - 8:00 pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on (703) 308-4037. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Application/Control Number: 09/825,067

Page 7

Art Unit: 1743

A handwritten signature in cursive script, appearing to read "Jan M. Ludlow".

Jan M. Ludlow
Primary Examiner
Art Unit 1743

Jml

September 22, 2003